

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WILLIAM SMITH,

**Plaintiff,**

v.

RODULF TRIVENO, RANDY PIERCE,  
CATHERINE BAUM, GARY FLETCHER,  
WILLIAM ROLLINS, PATRICK GLEBE,  
DAN VAN OGLE, KERRI McTARSNEY,  
DENNIS DAHNE, TAMMY NIKULA,  
DANO GORTON, KATHY RENINGER, and  
JOSEPH LOPIN.

### Defendants.

No. C11-5401 RBL/KLS

**ORDER DENYING PLAINTIFF'S  
MOTION TO APPOINT COUNSEL**

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is Plaintiff's motion for the appointment of counsel. ECF No. 8. Having carefully reviewed Plaintiff's motion, Defendants' opposition (ECF No. 14), Plaintiff's reply (ECF No. 19), and balance of the record, the Court finds, for the reasons stated below, that Plaintiff's motion should be denied.

## DISCUSSION

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). See also *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may

1 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28  
2 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
3 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional  
4 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]  
5 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal  
6 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting  
7 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he  
8 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to  
9 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d  
10 1101, 1103 (9<sup>th</sup> Cir. 2004).

12 That a *pro se* litigant may be better served with the assistance of counsel is not the test.  
13 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues  
14 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further  
15 facts during litigation. But, if all that was required to establish the complexity of the relevant  
16 issues was a demonstration of the need for development of further facts, then practically all cases  
17 would involve complex legal issues. *Id.*

19 Plaintiff states that he requires the appointment of counsel because he cannot afford  
20 counsel, his imprisonment will greatly limit his ability to litigate, the issues involved in his case  
21 are complex, he has limited access to the law library and limited knowledge of the law, and that  
22 counsel will be better able to present evidence and examine witnesses at trial. ECF No. 8, pp. 1-  
23 2.

25 Plaintiff filed his complaint *pro se* and has demonstrated an adequate ability to articulate  
26 his claims *pro se*. The pleadings on file demonstrate that Plaintiff is familiar with the Court

1 rules as well as the law pertaining to his claims. Contrary to Plaintiff's belief, this is not a  
2 complex case. Plaintiff claims that he received inadequate medical treatment while imprisoned  
3 at the Stafford Creek Corrections Center (SCCC). This case does not involve complex facts or  
4 law.

5           The court finds no exceptional circumstances in this case. While Plaintiff may not have  
6 vast resources or legal training, he meets the threshold for a *pro se* litigant. Concerns regarding  
7 investigation and discovery are also not exceptional factors, but are the type of difficulties  
8 encountered by many *pro se* litigants. There are also numerous avenues of discovery available to  
9 the parties through the Federal Rules of Civil Procedure during the litigation process.  
10 Moreover, despite claiming in conclusory fashion that his case has merit, Plaintiff has not shown  
11 a likelihood of success on the merits.

12           Accordingly, Plaintiff's motion to appoint counsel (ECF No. 8) is **DENIED**. The Clerk is  
13 directed to send copies of this Order to Plaintiff.

14           **DATED** this 7th day of July, 2011.

15             
16           Karen L. Strombom  
17           Karen L. Strombom  
18           United States Magistrate Judge  
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